No. 12,609

IN THE

United States Court of Appeals

For the Ninth Circuit

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

SIGVALD NIELSON and MADGE NIELSON,
Respondents.

On Petition for Review of the Decisions of The Tax Court of the United States.

BRIEF FOR THE RESPONDENTS.

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PRELIMINARY STATEMENT.

These cases are presented on petitions filed by the Commissioner of Internal Revenue for review of decisions of the Tax Court of the United States. The taxpayers are husband and wife who included in their gross income for the year 1944 their shares of a fee received in that year by the law partnership of which the husband was a partner. This fee covered compensation paid in a lump sum for legal services performed by the partnership for a period from August 1, 1935, to May, 1943. Section 107(a) of the Internal Revenue Code provides a special tax treatment of compensation from personal services rendered over a period of thirty-six months or more.

The sole question is whether the taxpayers are entitled to the benefits of section 107(a) of the Internal Revenue Code in computing their income tax for the taxable year 1944 with respect to their shares of said fee.

There is no dispute as to the computation of the tax liability or the allocation of the income over the years in which the services were rendered, if the taxpayers are eligible to receive the benefits of that section. It is also not disputed that the income in question is community income and that the wife is entitled to the benefits of section 107(a) for her portion of the fee involved, which represents her share of the community income if said section applies to her husband. The Commissioner's contention that the taxpayer and his wife are not entitled to the benefits of section 107(a) was rejected by the Tax Court in its memorandum findings of fact and opinion (R. 48).

Inasmuch as the cases with respect to the tax liability of the taxpayers involve the same issue and same material facts that were considered by the Tax Court, the petitions for review are presented to this court on a single record. The question is identical to that presented in *Commissioner v. Enersen,* now pending before this Court on review in Docket No. 12610. The Commissioner's argument adopts in this case and incorporates by reference all of the argument advanced in the Commissioner's brief in the *Enersen* case. Accordingly taypayers' brief will be addressed to the petitioner's brief filed in the *Enersen* case.[1]

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[1]All references herein to petitioner's brief, unless otherwise designated, will refer to the brief filed by the Commissioner in the case of *Commissioner v. Enersen,* Docket No. 12610.

JURISDICTION.

The jurisdictional statements in the petitioner's brief in this case (p. 1) are accepted.

QUESTION PRESENTED.

The question presented is whether a partner and his wife are entitled to the benefits of section 107(a) of the Internal Revenue Code with respect to the portion of a fee included in their gross income, such fee representing compensation for personal services performed by the partnership for a period exceeding thirty-six months, even though the husband had not been a partner for thirty-six months or more at the time of the receipt of said income by the partnership.

STATUTES AND REGULATIONS INVOLVED.

The issue arises under section 107(a) of the Internal Revenue Code as amended by section 139 of the Revenue Act of 1942, c. 619, 56 Stat. 798, the provisions of which are as follows:

> "(a) PERSONAL SERVICES.—If at least 80 per centum of the total compensation for personal services covering a period of thirty-six calendar months or more (from the beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, the tax attributable to any part thereof which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income

of such individual ratably over that part of the period which precedes the date of such receipt or accrual."

For the convenience of the Court there is attached in the appendix for comparison purposes the provisions of this section as it read prior to its amendment by the Revenue Act of 1942. The pertinent provisions of the regulations are as follows (Regs. 111, sec. 29.107-1):

> "It is not necessary, in order for section 107(a) to be applicable, that the individual who includes in his gross income compensation for such personal services be the person who renders the services. For example, a partner who shares in the compensation for such personal services rendered by the partnership may be entitled to the benefits of section 107(a), notwithstanding that he took no part in the rendering of such services."

STATEMENT OF FACTS.

All of the facts were stipulated and were found by the Tax Court to be as stipulated (R. 49). The facts are fully and adequately stated by the Commissioner in his brief. Summarized briefly they are as follows:

During the year 1944 respondent Sigvald Nielson (hereinafter referred to as "taxpayer") and his wife included in their gross income their respective shares of a fee received in a lump sum by the law partnership of which taxpayer was a member. Said fee represented compensation for legal services rendered by the partnership from August 1, 1935, to May, 1943. The taxpayer was a partner of said partnership throughout the entire

year 1944. During the period in which said services were rendered by the partnership the taxpayer, from 1935 to January, 1939, was employed by the partnership on a fixed salary, and thereafter, until he became a partner on May 1, 1942, was employed on a fixed salary plus a stated percentage of the net profits of the partnership for each year. The Commissioner has allowed the benefits of section 107(a) to all of the partners of said partnership who had been partners for more than thirty-six months prior to the receipt of said fee (R. 24). The benefits of section 107(a) were denied to taxpayer and his wife by the Commissioner for the sole reason that taxpayer had not been a member of the partnership for a period of thirty-six months or more prior to the receipt of the fee here involved.

The Tax Court held that the taxpayer and his wife were entitled to the benefits of section 107(a) in respect to their shares of said fee (R. 48-55).

SUMMARY OF ARGUMENT.

As originally enacted in 1939 section 107 of the Internal Revenue Code applied only to an individual who rendered personal services in an individual capacity or as a member of a partnership for a period of five calendar years or more. Said section was amended by section 139 of the Revenue Act of 1942, and as amended is applicable to the taxable year in question. Among other changes, the amendment expressly eliminated the requirement of personal services in order for an individual to qualify for the benefits of section 107. Section 107(a) in

its amended form expressly made eligible to receive its benefits *any* individual required to include in his gross income compensation received for personal services performed over a period of thirty-six months or more, where at least 80 per cent of such total compensation was received in one taxable year. The taxpayer and his wife were clearly required to include in their gross income for 1944 their shares of the fee for which they are claiming the benefits of section 107(a). The Commissioner in attempting to deny them the benefits of said section relies on the decision of this Court in *Lindstrom v. Commissioner of Internal Revenue* (9 Cir. 1945) 149 F.2d 344. This case arose under section 107 as originally enacted, and the law was expressly amended in 1942 to eliminate the basis upon which this decision rests. This decision applies the requirement that existed in the prior law that the person receiving the benefits of section 107 must be an individual who actually performed the personal services giving rise to the long-term compensation for the prescribed period.

The legislative history of the amendment of section 107 clearly reveals the intent of Congress to make the benefits of section 107(a) available to any individual required to include in his gross income long-term compensation.

The theory upon which the deficiencies herein have been determined is that no person is entitled to receive the benefits of section 107(a) unless his right to receive the income for which such benefits are claimed existed for thirty-six months or more. Even if this theory is accepted, the facts in these cases show that the taxpayer and his wife for more than thirty-six months had the right to receive a share of the fee in question, either as a part-

ner or as a profit-sharing employee. Congress in general language expressly made the benefits of section 107(a) available to any individual required to include in his gross income long-term compensation. The taxpayer and his wife under the express terms of the statute are therefore entitled to receive the benefits of section 107(a) as the court below correctly held.

ARGUMENT.

I.

SECTION 107(a) AS AMENDED EXPRESSLY APPLIES TO ANY INDIVIDUAL INCLUDING IN HIS GROSS INCOME ANY PART OF COMPENSATION FOR PERSONAL SERVICES COVERING A PERIOD OF THIRTY-SIX CALENDAR MONTHS OR MORE.

Ordinarily a member of a partnership must include in his income all of his distributive share of the partnership income for the taxable year and compute his tax upon all of his taxable income in said year. An exception to this general rule was provided by section 107 of the Internal Revenue Code, which was added by section 220 of the Revenue Act of 1939, c. 247, 53 Stat. 862, 878. Said section was amended by section 139 of the Revenue Act of 1942, and the section as so amended is admittedly applicable to the taxable year in question, 1944. In enacting this section Congress was aware of the hardship of including in income in one year amounts representing compensation for personal services rendered over a long period of time. It therefore provided in section 107(a) that the tax on such income should be not greater than the aggregate amount of tax that would have been paid

had the income been received monthly over the period during which the services were rendered. There are three elements involved in the application of section 107(a) as amended. Said section first defines the income to which the section applies, which for convenience is referred to herein as "long-term compensation;" secondly, said section identifies the taxpayers to whom the benefits of the section are available, and, thirdly, it prescribes the measure of relief accorded in computing the tax on the long-term compensation.

In these cases there is no controversy with respect to the first point. The stipulated facts show that the fee in question represented compensation for personal services received by a partnership in a lump sum upon completion of services extending over a period of thirty-six months or more (Pet. Br. p. 11).

There is likewise no dispute as to the method of computing the tax benefits available to taxpayer and his wife in the event section 107(a) is applicable to them (R. 23-24).

Accordingly, the question here presented is narrowed to an interpretation of the clause which identifies the individuals who are entitled to the benefits of the section. In simple and clear language it grants the tax relief to "any individual" in whose gross income is included any part of long-term compensation. The statute may be simply paraphrased as follows: If any long-term compensation is included in the gross income of any individual, such individual is entitled to the statutory relief. Since it is admitted that long-term compensation was included in the gross income of taxpayer and his wife for 1944, it

follows that each of them is entitled to the statutory relief offered under section 107(a).

The Tax Court's decision in this case relied on its decision in the case of *Elder W. Marshall*, 14 T.C. 90, now pending before the Court of Appeals for the Third Circuit on petition for review by the Commissioner. The Commissioner likewise urged in that case that section 107(a) was not applicable to a taxpayer who was not a partner for more than thirty-six months. The Tax Court rejected this contention, stating as follows (pp. 94-95):

> "Since it is the status of the recipient of the income in the year of receipt, and not either his status in prior years, *Federico Stallforth*, 6 T.C. 140, or the identity of the individual who contributed the services that is made to govern the application of section 107 in its present form, we are satisfied that under the facts of this proceeding petitioner correctly computed his tax by use of its provisions."

Section 107(a) in crystal-clear language refers to "any individual" who includes in gross income long-term compensation. It applies to individuals who are members of a partnership as well as those who are not. It applies equally to the spouse of a partner in a community property state who is required to include long-term compensation in her gross income as her share of the community income, as well as to her husband. There is no room for construction. Congress in precise terms identified the individuals entitled to the benefits of section 107(a) as those who include long-term compensation in their gross income. There is no language in section 107(a) restricting its application to individuals who were members of a partnership for more than thirty-six months prior to

the receipt of long-term compensation. The decision of the court below that section 107(a) is applicable to the taxpayer and his wife rests on the express provisions of the statute.

II.

THE LEGISLATIVE HISTORY OF SECTION 107(a) ESTABLISHES AFFIRMATIVELY THAT CONGRESS DID NOT INTEND TO APPLY THE RESTRICTION WHICH THE COMMISSIONER SEEKS TO IMPOSE.

Prior to the amendment of section 107 by the Revenue Act of 1942, and as originally enacted, the section applied only to individuals actually rendering the personal services for which the compensation was received. The provisions of section 107 in their original form were considered by this court in the case of *Lindstrom v. Commissioner of Internal Revenue* (9 Cir. 1945) 149 F.2d 344. In that case the taxpayer was a member of a law partnership which received a fee for legal services rendered by the partnership and by the taxpayer's partner prior to the formation of the partnership. The taxpayer attempted to add to the period during which services were rendered by him in his capacity as a member of the partnership the time during which services were rendered by his partner prior to the existence of the partnership, in order to meet the requirements of section 107. This court correctly held that the taxpayer was not entitled to the benefits of section 107 as it then read, for the reason that he had not personally rendered services for the prescribed period. The court was aware of the amendment of section 107 by the Revenue Act of 1942 and seemingly felt

that a different result would have been required by that section as amended, for it pointed out specifically in its opinion (p. 346):

> "The subsequent amendment of this section by Section 139 of the Revenue Act of 1942 does not apply as it relates only to taxable years beginning *after* December 31, 1940."

There is no question here of any "tacking on" to the period of membership in the partnership the period during which the services were rendered by the partnership, as petitioner states in his brief (Pet. Br. p. 12). Section 107 in its original form was confined to individuals who actually rendered personal services giving rise to the long-term compensation. Congress specifically changed the provisions of section 107 relating to the persons entitled to claim its benefits. It specifically provided by its amendment of section 107 contained in the Revenue Act of 1942 that its benefits would be available to any individual who included long-term compensation in his gross income.

Petitioner's reliance on the *Lindstrom* case, supra, is therefore completely unfounded, since the language on which the decision rests was specifically amended. That the result reached in the *Lindstrom* case was no longer intended to be applicable is made clear from the Senate Committee Report on amendment to section 107 (S. Rep. 1631, 77th Cong. 2d Sess., p. 109 (C.B. 1942-2, 585, 586)):

> "As revised by your committee, section 107(a) provides that, with respect to taxable years beginning after December 31, 1941, if at least 80 per cent of the total compensation for personal services covering a period of 36 calendar months or more (from the

beginning to the completion of such services) is received or accrued in one taxable year by an individual or a partnership, then the tax attributable to any part of the amount received or accrued in such year, which is included in the gross income *of any individual,* shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period of the services which precedes the date of such receipt or accrual. * * *

In order for section 107(a) to be applicable, *it is not necessary that the individual* who includes in his gross income compensation for such personal services *be the person who renders such services.* For example, a partner who shares in compensation for such personal services rendered by the partnership may be entitled to the benefits of section 107(a), notwithstanding that he took no part in the rendering of such services. Likewise, in community property States, the spouse of a person who renders such personal services may be entitled to the benefits of section 107(a)'' (italics supplied).

Prior to the enactment of this amendment there was no requirement as to period of membership in a partnership for eligibility to the benefits of section 107. Eligibility was then limited to persons who performed personal services giving rise to the long-term compensation, whether in their individual capacity, or as members of a partnership, or both. By its amendment, as shown in the Committee Report, Congress clearly evidenced its intent to eliminate from the statute the requirement that personal services giving rise to the long-term compensation had to be rendered by the taxpayer entitled to the

benefits of section 107(a). Congress instead made the benefits available to any individual required to include in gross income such long-term compensation. The court below aptly summarized the effect of this change in its opinion in the *Marshall* case (pp. 92-93):

> "The parties are in apparent agreement that prior to the 1942 amendment respondent's position was the only tenable one. It was in fact so held. *Ralph G. Lindstrom,* 3 T.C. 686. But there the court took pains to point out on affirmance, *Lindstrom v. Commissioner* (C.C.A., 9th Cir.), 149 Fed. (2d) 344, 346, that:
>
> ' * * * The subsequent amendment of this section by Section 139 of the Revenue Act of 1942 does not apply as it relates only to taxable years beginning *after* December 31, 1940.'
>
> A comparison of the language of the section before and after the amendment demonstrates, however, that emphasis was reversed by the new provision and was removed from the person who renders the services to the person who is required to report the income."

The petitioner does not deny that Congress intended to eliminate the requirement that a member of a partnership claiming the benefits of section 107(a) must establish that he personally performed or participated in the services giving rise to the long-term compensation (Pet. Br. p. 19). However, petitioner asserts that in eliminating this period of service requirement, Congress intended to require a period of membership in a partnership for eligibility to the benefits of section 107. This ignores the clear provision in the statute that the benefits are accorded to any individual who includes in his gross income long-term compensation. Petitioner can not point to any language in section 107(a) which prescribes a period of

membership in a partnership as a prerequisite to eligibility to its benefits. Petitioner does not attempt to do so. He merely relies on statements as to the "basic purpose" of section 107 and abstracts from the Committee report dealing with section 107 as it was originally enacted a statement that the basic purpose of said section was to grant relief to persons "who work for long periods of time without pay." The assertion is made by petitioner that Congress in amending the law in 1942 intended in no way to depart from that basic purpose (Pet. Br. p. 20).

These contentions are made in the face of the admitted purpose of Congress in changing the law in 1942 to grant relief to persons who performed no services whatever giving rise to the long-term compensation. Petitioner specifically states that the requirement of personal service was expressly eliminated by the 1942 amendment in identifying the persons entitled to the benefits of section 107(a). Congress did then enlarge its original basic purpose. Congress preserved its purpose of relieving taxpayers from hardship resulting from the inclusion in their income of long-term compensation but made the relief available to any individual. The hardship that Congress was dealing with was the bunching up of income in the year of receipt of long-term compensation. Congress recognized that the hardship accrued to all persons including such bunched up income in their returns. The hardship attaches not to the individual who performs the service but to the person who is liable for the tax on such income. In order to alleviate the hardship uniformly and equitably, relief was made available to any individual who must include long-term compensation in his gross income. This is clearly revealed

by comparing the taxpayer's position with the position of other members of the firm who have been accorded the benefits of section 107(a), whether or not they performed personal services in earning the long-term compensation involved herein (R. 24). Such partners have been accorded the benefits of section 107(a) merely because they were members of the partnership for more than thirty-six months prior to the receipt of the income in question. Petitioner's assertion that the relief must be denied to taxpayer because he was not a person working for "long periods of time without pay" (Pet. Br. p. 21) will not bear analysis in the face of his admitted allowance of relief to other partners who had not rendered personal services in earning the fee in question. It is clear that taxpayer and his wife are equally entitled to the benefits of section 107(a) for they, like the other members of the partnership, were required to include a part of the fee in their gross income.

Petitioner states that the taxpayer's position may be within "a permissible interpretation" of the language of the statute as amended, but that it is not within the intent expressed by Congress, and that to sustain it would lead to "absurd and unreasonable consequences" (Pet. Br. pp. 25-26). More to the point is the fact that petitioner's position is *not* within a permissible interpretation of the language of the statute. It can not be said that the equal treatment of all members of a partnership with respect to their distributive shares of long-term compensation of the partnership would lead to absurd and unreasonable consequences. Equal treatment is the rule for all other items of income, deductions or credits of a partnership (I.R.C., sec. 181-190). There is nothing

anomalous or absurd about a plainly expressed intention on the part of Congress to provide that long-term compensation of a partnership shall be treated as such for all members of the partnership alike who are required to include any part of it in their gross income.

The extreme case suggested by petitioner (Pet. Br. p. 26) is not before this court. The taxpayer was associated with the partnership throughout the period in which the personal services covering the fee in question were rendered. As the Tax Court said in *Elder W. Marshall,* 14 T.C. 90, 94:

> " * * * the generality of the statutory language justifies the conclusion that it was not the legislative purpose to draw narrow distinctions among the infinite possible factual variations which this very record thus exemplifies."

There is no need to confuse the narrow issue presented by any general discussion of the status of a partnership for tax purposes (Pet. Br. pp. 26-27). The application of section 107(a) does not rest on any theory of attribution of partnership services to the taxpayer for the purposes of section 107(a). The application of that section, as its legislative history and its language clearly demonstrate, relates to any individual in whose gross income long-term compensation is included. The taxpayer and his wife are clearly such individuals and are entitled to the benefits of said section.

III.

EVEN IF THE THEORY APPLIED BY THE COMMISSIONER IN DETERMINING THE DEFICIENCIES IS CORRECT, THE TAXPRAYER AND HIS WIFE, NEVERTHELESS, ARE ENTITLED TO THE BENEFITS OF SECTION 107(a).

The Commissioner's position that the taxpayer and his wife are not entitled to the benefits of section 107(a) because his membership in the firm did not exist for more than thirty-six months is expressed in a ruling promulgated in 1948 (G.C.M. 25795, C.B. 1948-2, 61).[2]

The statement that no taxpayer may qualify for the benefits of section 107(a) who did not render the personal services over a period of thirty-six months or more is directly contrary to the Commissioner's own regulations.

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[2]The ruling concludes as follows (p. 63):

"In view of the foregoing, it is the opinion of this office that the Lindstrom decision applies to cases involving taxable years beginning after December 31, 1940. As special tax exemption provisions of the Internal Revenue Code must be strictly construed, this means that no taxpayer, as an individual or a partner, may qualify for the benefits of section 107(a) who did not render the personal services in question over a period of 36 months or more. In recognition of how partnerships operate, this rule has been qualified with regard to partners to permit them to secure section 107(a) benefits even though they have not personally rendered the services for which the income is received. (See section 29.107-1, Regulations 111, *supra.*) Pursuant to the Lindstrom decision, partners may use only their own terms of membership in a partnership or predecessor firms (working on the same project for 36 months or more prior to the receipt or accrual of the fee in question) for the purpose of securing section 107(a) benefits. Where a partner's terms of membership equal 36 months or more in such a case, he meets the test of section 107(a) for individuals, as modified for partners, and is entitled to tax relief."

Such rulings do not have the force and effect of regulations (see cautionary notice on p. I, C.B. 1948-2).

The deficiency notices herein (R. 11, 15) state:

> "In order to qualify for relief under section 107(a) supra, your right to receive income for prior services must exist for a period of 36 months or more."

Even if this theory is accepted, under the facts in these cases it is clear that the taxpayer and his wife did have the right to receive income from the services resulting in the fee in question for a period of thirty-six months or more. The taxpayer and his wife were entitled to share in the net profits of the partnership long prior to the time taxpayer became a member of the firm. Had the fee in question been received at any time during the thirty-six-month period prior to its actual receipt, the taxpayer and his wife would have shared in such fee.

Apparently aware that the basis for the determination of the deficiencies herein does not exist under the facts in these cases, petitioner in his argument seeks to avoid the effect of this statement by asserting that prior to the taxpayer's admission to the firm, he was not in any sense a partner and acquired no proprietary right to fees accruing to the partnership but not collected (Pet. Br. p. 23). The reference to a proprietary right to income is nothing more than a restatement of petitioner's contention that the taxpayer must be a partner for a period of thirty-six months or more. Petitioner seeks to deny the effect of the express amendment to section 107 by the Revenue Act of 1942, which extended relief to any individual reporting long-term compensation in his gross income, and insists upon a requirement that did not exist prior to said amendment. Petitioner would restrict the benefits of section 107(a) to persons who are mem-

bers of a partnership for more than thirty-six months when, prior to the amendment of said section, a person was entitled to its benefits whether or not he was a partner for such period, so long as he performed services, either in his individual capacity or as a member of a partnership, or both, for the prescribed period. The Committee Report on the amendment to section 107 shows clearly that Congress intended to remove inequitable limitations and existing restrictions on the application of the relief provision contained in section 107 (Com. Rep., supra). Congress, as shown by the general language it used—"any individual"—did not intend to restrict the class of persons therefore eligible to section 107(a) relief.

Petitioner asserts that, until taxpayer was admitted to the partnership, he was being compensated currently for his services and therefore was not a person who worked "for long periods of time without pay" and who then received his compensation all at one time (Pet. Br. p. 22). Even if it be assumed that the benefits of the section are confined to persons who perform services for a long period of time and then receive compensation all at once, there is no essential difference between the taxpayer while he was on a profit-sharing basis and the persons who were members of the firm at that time. In both cases the taxpayer and the members of the firm were receiving their respective shares of the net profits of the partnership. Any compensation for personal services then being rendered by the partnership giving rise to fees being earned but not received was not reflected in the net profits in which the taxpayer and the partners shared. It must equally be said that the members of the partnership were likewise

fully compensated for their services in each particular year as petitioner asserts was true with respect to the taxpayer.

Section 107 was designed to provide relief on the basis of what would have been taxed to the recipient of income had such income been received by him as the services giving rise to the income were performed. In this respect the taxpayer is in exactly the same position as the members of the firm to whom the benefits of section 107(a) have been accorded, even though they performed no personal service giving rise to the fee in question. Section 107(a) was designed to relieve the hardship resulting from the fact that long-term compensation would not be taxed while the services were being rendered. Such hardship accrues to taxpayer and his wife in respect to the fee in question.

Since the taxpayer and his wife had a right to receive income from said fee if it had been received during the period taxpayer was a profit-sharing employee, even if this Court should accept the theory set forth in the deficiency notices herein, they are entitled to the benefits of section 107(a).

CONCLUSION.

For each of the foregoing reasons we respectfully submit that the decisions of the Tax Court in these cases are correct and should be affirmed.

Dated, San Francisco, California,
December 8, 1950.

Respectfully submitted,
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(Appendix Follows.)

Appendix.

Appendix

As originally enacted in 1939, Section 107 reads as follows:

> "SEC. 107. COMPENSATION FOR SERVICES RENDERED FOR A PERIOD OF FIVE YEARS OR MORE.
>
> In the case of compensation (a) received, for *personal services rendered by an individual* in his individual capacity, or as a member of a partnership, and covering a period of five calendar years or more from the beginning to the completion of such services, (b) paid (or not less than 95 per centum of which is paid) only on completion of such services, and (c) required to be included in gross income of *such individual,* for any taxable year beginning after December 31, 1938, the tax attributable to such compensation shall not be greater than the aggregate of the taxes attributable to such compensation had it been received in equal portions in each of the years included in such period" (italics supplied).

With only such rearrangement of the order of the clauses of the original statute quoted above as is necessary to facilitate its direct comparison with section 107(a) as amended in 1942 we submit the following:

Section 107 as originally enacted in 1939	Section 107(a) as amended in 1942
1. If not less than 95 per centum of	If at least 80 per centum of
2. compensation received for personal services	the total compensation for personal services
3. rendered by an individual in his individual capacity or as a member of a partnership and	* * * * * * *
4. covering a period of 5 calendar years or more from the beginning to the completion of such services	covering a period of 36 calendar months or more (from the beginning to the completion of such services)
5. is paid only on completion of such services	is received or accrued in one taxable year by an individual of a partnership and
6. and required to be included in gross income of *such* individual	any part thereof is included in the gross income of *any* individual
7. the tax benefits are available.	the tax benefits are available.